

## 37 Am. Jur. 2d Fraud and Deceit § 104

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### Fraud and Deceit

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### IV. False Representations

#### D. Matters of Law

#### 2. Exceptions to Rule of Nonliability

## § 104. Mixed law and fact; factual statement regarding legal matters

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  10

A representation of mixed law and fact may constitute the basis for an action in fraud<sup>1</sup> if it amounts to an implied assertion that facts exist that justify the conclusion of law which is expressed and the other party would ordinarily have no knowledge of the facts.<sup>2</sup> Moreover, while misstatements of law alone will not generally constitute fraud, they may, when such misstatements are accompanied by concealment or misrepresentation of facts, be made the basis of a charge of fraud.<sup>3</sup>

### Observation:

A statement referring to the occurrence of a specific legal event is factual, for the purpose of a fraudulent misrepresentation claim, only if the event has already occurred or is presently occurring and if it goes beyond opinion, conjecture, speculation, and prediction.<sup>4</sup>

Footnotes

- 1 [Cucchiaro v. Cucchiaro](#), 165 Misc. 2d 134, 627 N.Y.S.2d 224 (Sup 1995) (false mixed statement of fact as to what the law is or whether it is applicable); [Goerig v. Elliott](#), 27 Wash. 2d 600, 179 P.2d 320 (1947). Since a misrepresentation as to the law may give rise to an action for fraud, so may a misrepresentation as to a mixed question of fact and law, such as eligibility for reimbursement under the no-fault insurance laws. [AIU Ins. Co. v. Deajess Medical Imaging, P.C.](#), 24 Misc. 3d 161, 882 N.Y.S.2d 812 (Sup 2009).
- 2 [Hoyt Properties, Inc. v. Production Resource Group, L.L.C.](#), 736 N.W.2d 313 (Minn. 2007). Where the facts upon which a statement of law is based are misrepresented, there may be actionable fraud. [Sorensen v. Gardner](#), 215 Or. 255, 334 P.2d 471 (1959).
- 3 [Sorensen v. Gardner](#), 215 Or. 255, 334 P.2d 471 (1959); [Goerig v. Elliott](#), 27 Wash. 2d 600, 179 P.2d 320 (1947).
- 4 [In re Midway Airlines, Inc.](#), 180 B.R. 851 (Bankr. N.D. Ill. 1995) (applying Illinois law).

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